

R e m a r k s

After careful consideration of the outstanding Office Action, this application has been amended accordingly, and favorable reconsideration on the merits thereof is at this respectfully requested.

At page 2 of the Office Action, the Examiner rejected "Claims 1-6, 9, 10, 12-14, 16-19, 21 and 56" under 35 U.S.C. 102(b) as being anticipated by Bogar, Jr. '638."

Each of independent claims 1 and 56, as well as independent claim 30, has been substantially similarly limited by reciting "said first and second support brackets of said first pair of support brackets being disposed in substantially aligned opposing **spaced unconnected** relationship with said first and second support brackets respectively of said second pair of support brackets." The latter is clearly depicted by the pair of support brackets 51, 52 (Figure 6) and the portions 161, 161; 162, 162 thereof which are "disposed in substantially aligned opposing **spaced unconnected** relationship" to each other. The latter finds no counterpart in the Bogar, Jr. patent (3,823,638) in which comparable opposing support brackets 26, 28; 26, 28 (Figure 1) are clearly connected to each other and are at no time "disposed in substantially aligned opposing spaced relationship" to each other. As was set forth in Stoller v. Ford Motor Co., 18 USPQ 2d 1545, 1546, "A prior art reference anticipates a claim, and thus invalidates it under 35 U.S.C. § 102, if that reference discloses each and every element of the claim." Just as importantly, claims 1, 30 and 56 so limited define unobvious subject matter when interpreted and analyzed with respect to the prior art under the "three conditions" of Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), namely:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

Courts have consistently held that obviousness is tested by that which the teaching or combined teachings of prior art would have suggested to one of ordinary skill in the art. In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Before obviousness may be established, the Examiner must show that there is either a suggestion in the art to produce the claimed invention or a compelling motivation based on sound scientific principles. (Carl Schenck A.G. v. D Nortrom Corp., 713 F.2d 782, 218 USPQ 698, 702 Fed. Cir. 1983)

There is, of course, no motivation or suggestion in the prior art to construct the Bogar, Jr. base such that the portions 26, 28; 26, 28 are in aligned opposed **spaced unconnected** relationship to each other. As a matter of fact, to do so would render the Bogar, Jr. structure inoperative for its intended function because the ends 26, 28; 26, 28 would be unconnected and the side rails 12, 14 would simply tilt until the terminal ends 26, 28; 26, 28 would contact the ground rendering the support of a box spring/mattress thereupon impossible. With due respect, any modification to a prior art patent which renders the same inoperative for its intended purpose is incapable of rendering "the claimed invention *as a whole*" obvious. (See Panduit Corp. v. Dennison Manufacturing Co., 1 USPQ2d 1593, 1597). In view of the foregoing, the formal allowance of each of independent claims 1, 30 and 56 and the claims depending therefrom is considered proper and would be most appreciated.

The Examiner also rejected many of the claims of record under 35 U.S.C. § 102(b) "as being anticipated by U.S. Pat. No. 4,027,343 to Hooker." (See outstanding Office Action, page 3, paragraph 4.)

The Hooker patent adds little to the record and is essentially the equivalent of the Bogar, Jr. patent in that two side rails having opposing portions 44, 46 are secured to each other, are not in spaced unconnected relationship and thus are clearly allowable for the reasons heretofore advanced with respect to the Bogar, Jr. patent. The latter reasons are incorporated herein by reference, including the case law cited, in order not to unduly lengthen this record. In view thereof, the withdrawal of the latter-quoted rejection is respectfully requested,

The Examiner also rejected claims 1 through 10, 12 and 20 "under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Pat. No. 4,225,265 to Hooker et al." Hooker et al. discloses, for the purpose of the issues herein involved, identical structure as that in Hooker '343, and though opposing portions 34, 36 (Figure 1) of Hooker et al. are in opposing relationship to each other, they are neither spaced nor unconnected and obviously are not in "aligned opposing space unconnected relationship," as is recited in each of the independent claims heretofore discussed. Therefore, for these reasons as more specifically advanced in detail earlier, the allowance of claims 1 through 10, 12 and 20 over the patent to Hooker et al. ('265) is herewith respectfully requested.

In paragraphs 7, 8 and 9 of the Office Action, the Examiner has rejected claims 29 through 32 under 35 U.S.C. § 103(a) [obviousness] over the Hooker et al. and the Bogar, Jr. patents individually and has utilized secondarily the patents to Lafferty ('968) and Copeland ('596).

The Examiner cited the patent to Lafferty ('968) for the "basic teaching of a bed frame (12) supporting and fastened to an adjustable frame (22) which in turn supports a mattress (24)." The latter teaching does not, of course, address the limitations of the independent claims latter-quoted. Furthermore, it is evident from Figure 2 of the Lafferty patent that the entire frame 12 is of a unitized welded construction, including the lateral portions or sides 20 and the transverse members (unnumbered) of the legs 14, 16. Therefore, insofar as the rejection of claims 29 through 32 is concerned, the dependency thereof of claim 1 and the limitations of the latter claim heretofore noted avoid the rejection set forth at page 5, paragraph 7 of the Office Action. Accordingly, the formal allowance of claims 29 through 32 would be most appreciated.

The same comments made with respect to the combination of the Hooker et al.('265) and Lafferty ('968) patents are applicable to the rejection at page 6, paragraph 8 in which the patent to Bogar, Jr. ('638) was utilized as the "primary" patent. The Examiner again mentioned the teaching of Lafferty as being that of "a bed frame (12) supporting and fastened to an adjustable frame (22) which in turn supports a mattress (24)." However, the limitations of the brackets recited in applicant's independent claims as "being disposed in substantially aligned opposing spaced unconnected relationship" finds no counterpart in the latter teachings "as a whole" or in their entirety. Hence, the withdrawal of the rejection set forth at page 6, paragraph 8 of the Office Action is respectfully requested.

Claim 57 was singularly rejected "under 35 U.S.C. 103(a) as being unpatentable over Bogar, Jr. '638 in view of Copeland '596, or alternatively, as being unpatentable over Hooker '343 in view of Copeland '596." The

Examiner acknowledged that the primary patents "do not specifically disclose the use of a securing means which is a downwardly directed hook for receipt in a slot of at least one of a head board and a foot board." Claim 57 obviously depends from claim 56 and the latter claim has been discussed earlier herein including the limitation of the brackets "being disposed in substantially aligned opposing spaced unconnected relationship" to each other. In view of the reasons heretofore advanced with respect to the primary patents, which are incorporated hereat by reference, the formal allowance of claim 57 is likewise considered to be in order and would be most appreciated.

A careful review of the prior art indicates that applicant is entitled to the allowance of claims broader than those presently allowed, particularly with respect to an adjustable base associated with bed sections and a bed sections adjusting mechanism, as recited in new independent claim 58. The adjustable base of claim 58 is recited in combination with head, thigh and foot sections and means for selectively adjusting at least one of the latter sections. The claim also calls for first support means for supporting "said sections and said bed section adjusting means" followed by "second support means for supporting said first support means relative to said bed frame." Thus, the adjustable bed sections and the bed section adjusting means are carried by a first support which is supported relative to a bed frame by "second support means," and thereafter the last limitation recites "means for effecting variable fastener locations between said first and second support means to thereby accommodate at least one of said first and second support means for utilization with beds of different widths." The latter concept of an

adjustable support/base for an adjustable bed to accommodate beds of different widths simply finds no counterpart in the prior art.

In all of the applied patents, it is evident that the subject matter of each is simply a bed frame which is formed of bed members, most of which are adjustable relative to each other to accommodate mattresses of different sizes when supported directly thereupon. The patent to Lafferty ('968) adds thereto "a head section 26 and a lower section 28." Sections 26, 28 are tubular members pivotally interconnected at ends 30, 32 by pivots 33. The sections 26, 28 are manually pivoted and the bed includes "positioners (not shown) which lock the section in various positions." However, in terms of new claim 58, this patent discloses but a single support (12) and the structure 22 which may at least be loosely interpreted to include at least a head section and a thigh section. However, utilization of first and second supports and subject matter corresponding to the last limitation of claim 58 finds no counterpart in the Lafferty patent. More importantly, no prior art patent has been cited by the Examiner that deals with an adjustable bed in which there are essentially first and second support means 12; 51, 52, respectively (See applicant's Figure 6), with the first support means 12 supporting movable sections 140, 141, for example, and the means 100 for effecting adjustment thereof. Most importantly, it is the second support means (51, 52) which supports the first support means (12) and the last limitation of claim 58 recites the "means for effecting variable fastener locations between said first and second support means to thereby accommodate at least one of said first and second support means for utilization with beds of different widths." There is no recognition of utilizing an adjustable base as latter described and defined in claim 58 in conjunction

with an adjustable limitation of "means for effecting variable fastener locations between said first and second support means," particularly in association with cooperative interaction between the two supporting means "for utilization with beds of different widths." In view of the foregoing, absent the citation of pertinent prior art, the formal allowance of claim 58 and each of the claims depending therefrom is believed proper and would be most appreciated.

In view of the foregoing, the formal allowance of this application at an early date is herewith respectfully requested.

Respectfully submitted,
DILLER, RAMIK & WIGHT

By: 

Vincent L. Ramik, Reg. No. 20,663

7345 McWhorter Place
Suite 101
Annandale, VA 22003

703 642 5705 - phone
703 642 2117 - fax
www.drwpatentlaw@aol.com